

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Walla Walla District

FILE NUMBER: NWW No. 032300170

REGULATORY PROJECT MANAGER: Nicholle M. Rowell **Date:** October 24, 2005

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** October 24, 2005
At the project site (Y/N) N **Date:** _____

PROJECT LOCATION INFORMATION:

State: Idaho

County: Bonner

Center coordinates of site by latitude & longitudinal coordinates: Zone: 11 Northing: 5322677.54 Easting: 526844.69

Approximate size of site/property (including uplands & in acres): 0.2 acres

Name of waterway or watershed: Wetland N in Lake Pend Oreille Watershed

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)	X								
Stock Watering Pond									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?					X
Is used to irrigate crops sold in interstate commerce?				X	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

Wetland N is not jurisdictional because it is an isolated, non-navigable intrastate water with no nexus to interstate commerce. It has no apparent surface water connection to and does not flow into any other water of the United States. In addition, it is not subject to boating and is not open to the general public for use. Migratory birds may use this waterway. However, there is no other evidence of its use in interstate or foreign commerce. Based on Solid Waste Agency of

Northern Cook County v. U.S. Army Corps of Engineers (531 U.S. 159 (2001)), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule.